

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 08-10227-RGS

MICHAEL ALAN CROOKER

v.

WACHOVIA BANK, N.A.

MEMORANDUM AND ORDER ON DEFENDANT
WACHOVIA BANK, N.A.'S MOTION FOR SUMMARY JUDGMENT

May 14, 2008

STEARNS, D.J.

Plaintiff Michael Crooker asserts that defendant Wachovia Bank, N.A. (Wachovia) violated the Fair Debt Collection Practices Act (FDCPA), 15 U.S.C. §§ 1692c and 1692e, by dunning family members for repayment of a debt that Crooker owed to the bank. Wachovia moves for brevis disposition of the Complaint based on Crooker's alleged lack of standing and his failure to comply with the FDCPA's one-year statute of limitations.

BACKGROUND

Crooker is presently incarcerated at the Victorville Federal Correctional Institution in Adelanto, California. In May of 2001, Crooker financed a laser vision correction procedure by borrowing money from Wachovia. After repeatedly unsuccessful efforts at recouping the loan, in 2003 Wachovia threw in the towel and closed Crooker's account. On July 13, 2006, Wachovia sold Crooker's debt to Sherman Originator, LLC (Sherman), a collection agency.

On January 11, 2008, Crooker filed this action in the Norfolk Superior Court. The

Complaint alleges that Wachovia violated the FDCPA by: (1) sending demand letters to members of Crooker's family; (2) placing collection calls to family members; and (3) threatening legal action against Crooker if the debt was not repaid. After serving an answer to the Complaint, Wachovia removed the case to this court on February 11, 2008.

DISCUSSION

While Wachovia styles the motion as one for summary judgment, it might more properly be characterized as a Rule 12(b)(6) motion to dismiss or as a motion for judgment on the pleadings pursuant to Fed. R. Civ. P. 12(c). See Gulf Coast Bank & Trust Co. v. Reder, 355 F.3d 35, 38 (1st Cir. 2004). For present purposes, however, whether treated as a motion to dismiss or as a motion for summary judgment, the result is functionally the same.¹

Wachovia argues in the first instance that Crooker lacks standing to bring claims based on communications made to his family members and not to him personally. It is true that the FDCPA does not authorize derivative causes of action consistent with the prudential doctrine of "standing." See Lujan v. Defenders of Wildlife, 504 U.S. 555, 560 n.1 (1992) ("[A cognizable] injury must affect the plaintiff in a personal and individual way."). See also Wright v. Fin. Serv. of Norwalk, Inc., 22 F.3d 647, 649 n.1 (6th Cir. 1995) (en banc) ("[O]nly a 'consumer' has standing to sue for violations under 15 U.S.C. § 1692c . . . the most restrictive of the FDCPA's provisions."). Crooker, while conceding that he received no direct communication from Wachovia, maintains that he was vicariously

¹Crooker filed an opposition to Wachovia's motion for summary judgment without, however, controverting any of Wachovia's undisputed facts. See Aquila-Gerena v. Bristol Myers-Squibb Co., 95 F.3d 86, 95 (1st Cir. 1996).

harm by threats of prosecution conveyed to him by family members.²

Whether a FDCPA claim can be maintained on a theory of vicarious harm raises interesting and difficult questions. These need not, however, be addressed as Crooker's Complaint falls clearly outside the FDCPA's one-year limitations period.³ It is undisputed that Wachovia wrote-off Crooker's account in July of 2003 and sold the debt to Sherman on July 13, 2006. It is also undisputed that Wachovia has since had no communications with Crooker or his family. If Crooker had a viable claim against Wachovia, it expired (at the latest) on July 14, 2007, six months before the Complaint was filed.⁴

ORDER

For the foregoing reasons, Wachovia's Motion for Summary Judgment is ALLOWED.⁵

²Crooker does not allege this explicitly, but one infers from the Complaint that he learned about the threats from family members who had answered Wachovia's dunningcalls.

³Section 1692k of the FDCPA specifies that "[a]n action to enforce any liability created by this subchapter may be brought . . . within one year from the date on which the violation occurs."

⁴In his Opposition, Crooker argues that any violation of the FDCPA "is a *per se* violation" of Mass. Gen Laws ch. 93A. However, the Complaint as filed does not include a claim under the Massachusetts consumer protection statute. Nor as a matter of sovereignty can a state statute of limitations trump a more restrictive limitations period set out in a federal statute creating a federal cause of action. Cf. Cambridge Literary Props, Ltd. v. W. Goebel Porzellanfabrik G.m.b.H. & Co. KG, 510 F.3d 77, 86-87 (1st Cir. 2007) (state-law cause of action which involves a threshold determination of plaintiff's copyright ownership "arises under" the federal Copyright Act and thus is subject to the federal three-year statute of limitations).

⁵The court takes note of Judge Harrington's Memorandum and Order of March 24, 2008, holding that because Crooker has had three or more cases dismissed on the merits, he is ineligible to proceed *in forma pauperis* in future federal lawsuit. See 28 U.S.C. §

SO ORDERED.

s/ Richard G. Stearns

UNITED STATES DISTRICT JUDGE

1915(g). This Complaint, however, was filed before the entry of Judge Harrington's Order.